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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Bangladesh: public justice system incapable of addressing relentless enforced disappearance

The Asian Legal Resource Centre (ALRC) requests the UN Human Rights Council to pay adequate attention to enforced or involuntary disappearances in Bangladesh. The Council and its Special Procedures and the larger international community need to find ways, under their respective mandates and international law, to hold the Government of Bangladesh accountable for the "crimes against humanity" occurring without relent its jurisdiction. The ALRC makes this request on the basis of experiences of working on enforced or involuntary disappearances in Bangladesh, where no *de facto* judicial or administrative remedy exists for such crimes.

Human rights defenders associated with the ALRC, and its sister organisation the Asian Human Rights Commission (AHRC), have documented numerous cases of enforced disappearances in Bangladesh. Of cases documented, 212 individual persons have been disappeared between January 2009 and August 2015[1]. Eyewitnesses and family members claim that the law-enforcement agencies are responsible for abducting and subsequently disappearing the victims. From 23 March 2010, the date of Bangladesh's ratification of the Rome Statute[2], to 31 August 2015, 206 persons have been disappeared in Bangladesh.

According to information collected from relatives and eyewitnesses, out of the 206 victims, the Rapid Action Battalion (RAB) is responsible for disappearing 93 people; the Bangladesh Police has its hand in 14 cases, and the Detective Branch (DB) of the Police have disappeared 61 people. Additionally, the RAB and DB have disappeared six people in joint operations, two people have been disappeared jointly by the Police and the Ansar (Village Defense Party), and one person has been disappeared by the Industrial Police. The documentation shows that it is only 29 persons that have been abducted and disappeared by people that eyewitnesses could not identify. The hand of the State behind the disappearances is predominant.

The documentation has offered other revealing statistics. Among the 206 disappeared victims, 28 bodies have been found either floating in rivers or lying in ditches and farmlands across the country. A total of 80 persons have been found alive; of them 25 people have been later "shown arrested in criminal cases" between September 2014 and August 2015 and then detained in prison, and the others were either freed without a case being filed against them or are unaware about whether a case has been filed against them. Many victims that have returned home alive have refused to divulge too many details about abductions as well as the process of how and why they were released, due to fear of the possible repercussions in a climate of overwhelming impunity.

The ALRC recalls its Written Statement submitted to the 15th Regular Session[3] of the UN Human Rights Council. A case was reported at the time involving Mr. Ayub Ali Sarder, who pursued the case of his younger brother Mr. Akbor Ali Sarder. The younger brother was disappeared by the RAB on 19 March 2010. The elder brother himself became a victim of disappearance at the hands of the same paramilitary force on 19 May 2010. This case provides context to the chilling realities victims and their family members face, and explain why those that return alive count their blessings and are reluctant to disclose too many details relating to their disappearance.

The Bangladesh Judiciary has contributed to the recurrence of enforced disappearances by abdicating its constitutional authority and responsibility to guarantee the right to life and personal liberty of persons. Since 2009, the Supreme Court has not ordered any law-enforcement agency to produce any disappeared persons in the related Habeas Corpus writs that have been filed.

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[1] As mentioned in a Joint Statement by Asian Legal Resource Centre, FIDH – International Federation for Human Rights, and Asian Federation Against Involuntary Disappearances: http://alrc.asia/?p=778

[2] Bangladesh's Status of Ratification of the Rome Statute: http://www.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/bangladesh.aspx

[3] Asian Legal Resource Centre's Written Submission to 15th Regular Session of the UN Human Rights Council: http://alrc.asia/?p=778.

The High Court Division of the Supreme Court of Bangladesh has only issued "rule" against the respondents and accepted the statements of the law-enforcement agencies that have formally refused involvement in all crimes of disappearance. The Attorney General's Office, for its part, has performed a role of reading out the statements supplied by the agencies denying involvement. In many cases, the respondents have not even replied to the Court's rulings within the stipulated period or ever. However, the Court has not held any of the agencies of the State in contempt, something judges have been alarmingly quick to do to silence critics that point out judicial misconduct.

The sub-ordinate Judiciary, which includes the Magistrate's Courts and the Courts of Sessions Judge, have not prosecuted any perpetrator belonging to law-enforcement agencies, for the crimes of disappearance, save for an exception in Narayanganj District, involving the disappearance and subsequent extrajudicial murder of seven persons, including a lawyer and a City Councillor. This exceptional case, which is now pending trial before the Court in Narayanganj, involves political and economic interests of an influential group of the ruling political party; these connections paved the way for the conduct of investigations having reasonable credibility.

This special case apart, the reasons behind the non-prosecution of the crimes of enforced disappearance are intimidation, threats, and refusal by the police to give victims access to the complaint mechanism when the allegations are against their colleagues. It should also be noted that most of the victims are from the opposition political parties; this includes three former parliamentarians.

On the basis of the pattern of continued reprisals that include arbitrary detention, disappearance, and extrajudicial murder of opposition activists, there is no indication that the government of Bangladesh or the Judiciary are interested to ensure justice to victims belonging to the opposition parties.

The Working Group on Enforced or Involuntary Disappearances (WGEID) and the Council can check through their own human rights mechanism. Not a single case in the last six years has been credibly investigated let alone resulted in any prosecution. Instead, a majority of the victims' families survive under surveillance by the intelligence agencies.

The threats faced by families and by human rights activists that document disappearances in Bangladesh are dire. In relation to the observance of the current International Day of the Victims of Enforced Disappearances, there have been notable developments that the ALRC would like to share with the Council.

The ALRC, in cooperation with FIDH – International Federation for Human Rights, Asian Federation Against Involuntary Disappearances (AFAD), and *Odhikar*, a Bangladesh based human rights organisation having special consultative status with the Economic and Social Council of the UN, organised a meeting with the families of the victims of enforced disappearances at the auditorium of the National Press Club in Dhaka for which the venue was booked more than a month ago. The meeting was scheduled between 9:30 a.m. to 1:30 p.m. on 30 August.

Relatives of the victims started receiving phone calls from unknown people; the callers instructed the relatives not to participate in the meeting. On August 29, late afternoon, a National Press Club authority informed the local-organisers that the booking of the scheduled meeting had been cancelled, with an excuse that the Press Club will host "its own programme at the same venue on the same date".

On 30 August, the venue was left unoccupied. No programme took place. The only presence was the police, which had cordoned off the building. The fact is that the National Press Club collaborated with the government to preventing the victims from sharing their plight. Intimidation to the families and human rights defenders are still going on without any possibility of affording judicial or administrative remedy in the current circumstances.

It is an undeniable truth that the judicial institutions of Bangladesh are not capable of administering justice in compliance with the basic principles of fair trial. Bangladesh, a long-standing member of the Human Rights Council, does not comply with its obligations under the international instruments it is party to.

The Council and the international community need to find practical ways to prevent the citizens of Bangladesh from falling victim to the crime against humanity, that is, enforced disappearance. If the protection of people's right to life and personal liberty in Bangladesh and elsewhere is significantly important, the public justice institutions need to be fundamentally re-engineered enabling them to uphold the rule of law and justice to all objectively. The UN Human

Rights Council and its human right mechanisms should re-think about taking up the leading role in the re-engineering of the judicial institutions in the world, and particularly in Bangladesh. Given the state of citizens in Bangladesh, the ALRC requests that the International Criminal Court, which Bangladesh is a party to, holds the responsible authorities accountable for the crimes of disappearances.